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PART III.

Legislative Measures and Rules thereunder.

NOTIFICATION.

No. 246—L. C., dated 3rd March 1909.

Under Rule 32 of the Rules relating to the conduct of business of the Mysore Legislative Council, the following Bill together with a statement of objects and reasons therefor is published for general information.

By Order,
S. HIRIYANNAIYA,
Secy., Mysore Legislative Council.

A Bill to consolidate and amend the law relating to Courts of Small Causes in Mysore.

Whereas it is expedient to consolidate and amend the law relating to Courts of Small Causes in Mysore; His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

(*Section 1 of Act IX of 1887.*)

Title, extent and commencement.

1. (1) This Regulation may be called "The Mysore Small Cause Courts Regulation, 190 ."

(2) It extends to the whole of Mysore.

(3) It shall come into force on the 1st day of 190 .

(Section 2, sub-section (3) of Act IX of 1887.)

2. Any enactment or document referring to Act XI of 1865 shall, so far as may be, be construed to refer to this Regulation or to the corresponding portion thereof.

Construction of references to Act XI of 1865.

(Section 3 of Act IX of 1887.)

3. Nothing in this Regulation shall be construed to affect—

Savings.

(*a*) any proceedings before or after decree in any suit instituted before the commencement of this Regulation; or

(*b*) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature; or

(*c*) any local or any special law other than the Code of Civil Procedure.

(Section 4 of Act IX of 1887.)

4. In this Regulation unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Regulation, and includes any person exercising jurisdiction under this Regulation in any such Court.

Definition.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

(Section 5 of Act IX of 1887.)

5. (1) The Government may, by order in writing, establish a Court of Small Causes at any place in Mysore.

Establishment of Courts of Small Causes.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Government may define, and the Court may be held at such place or places within those limits as the Government may appoint.

(Sub-section (1) of section 6 of Act IX of 1887.)

6. When a Court of Small Causes has been established, the Government shall, by order in writing, appoint a Judge of the Court.

Judge.

(Section 9 of Act IX of 1887.)

7. A Judge of a Court of Small Causes may be suspended or removed from office by the Government.

Suspension and removal of Judges.

New section; in substitution for section 13 of Act IX of 1887.)

8. The Government shall allow a Court of Small Causes such establishment of ministerial officers as may be necessary; and subject to any orders made by the Government in this behalf, the Judge of a Court of Small Causes may appoint the ministerial officers of the Court and may fine, suspend or dismiss them.

Ministerial officers.

(Section 14 of Act IX of 1887.)

9. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Regulation or in any other enactment for the time being in force as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

Duties of ministerial officers.

(2) The Chief Court may make rules, consistent with this Regulation and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties

as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

(New Section.)

Cognizance of suits by Courts of Small Causes.

10. All suits of the classes specified in the schedule, of which the value does not exceed such sum not exceeding Rs. 500 as may be fixed in each case by the Government in this behalf, shall be cognizable by a Court of Small Causes; and no other suits shall be so cognizable. Provided that the Government may at any time add to or vary the schedule by a notification published in the official Gazette.

(Section 16 of Act IX of 1887.)

Exclusive jurisdiction of Courts of Small Causes.

11. Save as expressly provided by this Regulation or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

(Section 17 of Act IX of 1887.)

Application of the Code of Civil Procedure.

12. The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule to that Code shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits.

(Section 22 of Act IX of 1887.)

Adjournment of cases by chief ministerial officer.

13. When the Judge of a Court of Small Causes is absent, the chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

(Section 23 of Act IX of 1887.)

Return of plaints in suits involving questions of title to immoveable property.

14. (1) Notwithstanding anything in the foregoing portion of this Regulation, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property, the Court may, at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

(*Section 24 of Act IX of 1887.*)

Appeals from certain orders of Courts of Small Causes.

15. Where an order specified in section 588, clause (29), of the Code of Civil Procedure, is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court.

(*Section 25 of Act IX of 1887.*)

Revision of decrees and orders of Courts of Small Causes.

16. The Chief Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

(*Section 27 of Act IX of 1887.*)

Finality of decrees and orders.

17. Save as provided by this Regulation, a decree or order made under the foregoing provisions of this Regulation by a Court of Small Causes shall be final.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

(*Section 28 of Act IX of 1887.*)

Subordination of Courts of Small Causes.

18. A Court of Small Causes shall be subject to the administrative control of the District Court, and to the superintendence of the Chief Court, and shall—

(*a*) keep such registers, books and accounts as the Chief Court from time to time prescribes, and

(*b*) comply with such requisitions as may be made by the District Court, the Chief Court or the Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(*Section 29 of Act IX of 1887.*)

Seal.

19. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Government.

(*Section 30 of Act IX of 1887.*)

Abolition of Courts of Small Causes.

20. The Government may, by order in writing abolish a Court of Small Causes.

(*Section 31 of Act IX of 1887.*)

Saving of power to appoint Judge of Court of Small Causes to other office.

21. (1) Nothing in this Regulation shall be construed to prevent the Government from appointing a person who is a Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

(*Section 32 of Act IX of 1887.*)

Application of Regulation to Courts invested with jurisdiction of Court of Small Causes.

22. (1) So much of Chapters III and IV as relates to—

(*a*) the nature of the suits cognizable by Courts of Small Causes,

(*b*) the exclusion of the jurisdiction of other Courts in those suits,

(*c*) the practice and procedure of Courts of Small Causes,

(*d*) appeal from certain orders of those Courts and revision of cases by them,

and

(*e*) the finality of their decrees and orders subject to such appeal and revision as are provided by this Regulation,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

(*Section 33 of Act IX of 1887.*)

Application of Regulation and Code to Court so invested as to two Courts.

23. A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Regulation and the Code of Civil Procedure, be deemed to be different Courts.

(*Section 34 of Act IX of 1887.*)

Modification of Code as so applied.

24. Notwithstanding anything in the last two foregoing sections—

(*a*) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(*b*) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,—

the documents mentioned in section 224 of the Code of Civil Procedure shall not be sent with the decree, unless in any case the Court, by order in writing, requires them to be sent.

(*Section 35 of Act IX of 1887.*)

Continuance of proceedings of abolished Courts.

25. (1) Where a Court of Small Causes or a Court invested with the jurisdiction of a Court of Small Causes has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure, as extended to Courts of Small Causes, or in any other enactment for the time being in force.

(*Section 37 of Act IX of 1887.*)

Publication of certain orders.

26. All orders required by this Regulation to be made in writing by the Government shall be published in the official Gazette.

SCHEDULE.

SUITS COGNIZABLE BY COURTS OF SMALL CAUSES.

(See section 10.)

(1) A suit for money lent;
(2) A suit for money by or against a surety;
(3) A suit for the price of goods sold;
(4) A suit on a contract for work and labour;
(5) A suit on a contract of hiring and service;
(6) A suit for rent when there is an express agreement to pay;
(7) A suit for payment for board and lodging;
(8) A suit for money received by defendant for plaintiff's use;
(9) A suit for money paid to defendant by mistake or money overpaid;
(10) A suit for money paid or goods delivered at defendant's request;
(11) A suit for damages for breach of a contract of sale of goods;
(12) A suit for money deposited when the total deposit does not exceed the pecuniary jurisdiction of the Court;
(13) A suit for recovery of specific moveable property pledged or deposited with the defendant, or its value.

STATEMENT OF OBJECTS AND REASONS.

The Small Cause Courts Act, XI of 1865, was never formally extended to Mysore, but owed its force to a Notification of the Government of India in the Foreign Department, No. 31—I. J., dated the 28th January 1880, which added certain words to Rule 8 of the Rules promulgated with the earlier Notification of 27th August 1879, No. 235—I. J.

The amended Rule 8 is transcribed below, the additions being shown in italics :—

"The Chief Commissioner may invest, within such local limits as he from time to time fixes, any Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes *under Act No. XI of 1865 (an Act to consolidate and amend the law relating to Courts of Small Causes, etc., etc.)*, for the trial of suits cognizable by such Courts up to such amount as the Chief Commissioner may think fit, not exceeding Rs. 500, and any Munsiff with similar jurisdiction up to such amount as the Chief Commissioner may think fit, not exceeding Rs. 50."

"*All the provisions of the said Act No. XI of 1865 shall, so far as they are consistent herewith, apply to the Court of any Subordinate Judge or Munsiff when exercising the jurisdiction with which he is so invested.*"

"The Chief Commissioner may, whenever he thinks fit, withdraw such jurisdiction from the Subordinate Judge or Munsiff so invested."

The whole of the substantive Notification of the 27th August 1879 was, however, repealed by Section 2 of the Mysore Civil Courts Regulation, I of 1883, since which time all investitures of judicial officers with Small Cause powers have been effected under the said Regulation, I of 1883. But the amending Notification of 28th January 1880 was not at the time expressed to be repealed; and this has led, in certain quarters, to the entertainment of doubts as to the Small Cause law in force in Mysore.

2. The object of the present measure is not only to set such doubts at rest, but also to bring the law of Mysore on the subject into line with the British Indian Law, *viz.*, the Provincial Small Cause Courts Act, IX of 1887, so far as the provisions of the latter are adapted to local requirements. It may be noted, in passing, that the Draft Regulation is not intended to supersede Section 16 of the Civil Courts Regulation. The former enables Government (among other things) to establish Courts of Small Causes pure and simple, while the latter provides for the investiture of certain classes of judicial officers with the jurisdiction of Courts of Small Causes, such jurisdiction being exercised as laid down in Section 22 of the Draft Regulation.

3. Among the provisions which it has been considered unnecessary to incorporate in the Draft Regulation for the present are those relating to the appointment, functions, etc., of single Judges for several Courts of Small Causes, Additional Judges and Registrars.

4. Section 8, regarding ministerial establishment, is new, and corresponds to Section 13 of Act IX of 1887, but is simpler than the latter.

5. Act IX of 1887 contains a schedule of 44 clauses, which specifies the suits excluded from the jurisdiction of Courts of Small Causes; all other suits of a civil nature which do not exceed a prescribed limit of value are made cognizable by those Courts.

The purpose of this classification is, doubtless, to restrict the jurisdiction of Small Cause Courts to petty suits not involving difficult or intricate questions of law or fact. As a matter of fact, however, several of the suits cognizable by such Courts under the Indian Act are (as shown by Mr. Justice A. Ramachandra Aiyar in his memoranda of April 1890 and May 1893), as difficult as some of those which have been excluded. Thus, actions for deceit, or negligence, or for money had and received, or for compensation for not completing a contract of sale of land, are not excluded from the schedule and yet these classes of actions *prima facie* involve as difficult questions of law and fact as the classes specified in the schedule. Again, a concrete instance may be imagined in which the same set of acts may cause injury to the *person* and to personal *property* of the plaintiff; but though the questions of fact and law involved, so far as they relate to the liability of the defendant to pay damages, may be the same in both cases, a Small Cause Court is deemed competent to adjudicate on a suit for compensation in the latter case, but not in the former. Similarly, an action for conversion, say, of a horse or jewel, though sometimes more difficult to decide than an action for libel or malicious prosecution, is yet cognizable by a Small Cause Court, while the latter is excluded from its jurisdiction.

These and other instances suggest that the classification of suits contained in the Indian Act is not quite satisfactory, and that the sphere of suits to be excluded from the cognizance of Small Cause Courts should be enlarged.

A reference to past reports on the administration of Civil Justice in Mysore shows that most of the suits filed on the Small Cause side are suits for money lent, or for goods supplied, or for wages, or for rent. All the suits which it is desirable a Small Cause Court should be empowered to try may easily be grouped under a few general heads. It has therefore appeared to be the best course to specify these groups in a new schedule in place of the one appended to the Indian Act and to enact that suits not so specified shall not be entertained by Small Cause Courts. This has accordingly been done in Section 10 of the Draft Regulation, which also empowers Government to add to or vary the schedule by a notification published in the Gazette.

It may be added that the Chief Court, whose opinion was invited on the measure, considers that the new provision is a decided improvement on the corresponding provision of the Indian Act, and that the classification of suits cognizable by Courts of Small Causes as given in the Draft Regulation is at once simple and clear.